SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. ~~934~~ 104

RELIANCE PICTURE FRAME COMPANY,

Petitioner,

—against—

COVENTRY WARE, INC.,

Respondent.

PETITIONER'S REPLY BRIEF

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Statement of Additional Facts

Respondent argues (Resp. Brief p. 3) that it is evident petitioner killed respondent's business in the items in question.

There is no factual showing in the record of respondent's unit or dollar sales of the items involved, either before or after the alleged infringements. On the contrary, the record shows that for the period in question, respondent's gross sales increased by 20% (R. p. 25a).

ARGUMENT IN REPLY

Petitioner does not seek to upset the provisions of 17 U.S.C. § 10; rather, to have them applied according to their apparent intendment.

(Answering Respondent's 1, 2 and 3)

The crucial question is: what is the copy of the work; is it the original design of the creating artist or the utilitarian implementation of that design for commercial purposes?

The composition backing of the works in question here are no more a part of the work of art than the brace over which a painter stretches and nails the canvas on which his work of art is to be created. The brace device is mechanical merely.

Petitioner does not contend for dissection of respondent's plaque, but that it be marked with the notice of copyright in compliance with the statute.

Precisely to minimize possible disfigurement does the statute (17 U.S.C. §19) provide for an alternative form of notice with respect to such works of art. Respondent did not avail itself of the opportunity for such alternative marking.

With respect to sculptured figures, one need only examine the busts of some of the deceased Chief Justices of this court, positioned in the main lobby of this courthouse, to observe the name of the sculptor on the bust itself. Such marking rather than defacing the work honors both the figure and its creator.

As Judge Dawson observed in dismissing respondent's action in the District Court, the component parts of the plaque formed an integral whole for decorative purposes, a utilitarian or mechanical aspect with which the statute is not concerned (37 C.F.R., CH. II, §202.8 (a)).

Interestingly, Judge Dawson, in *Syracuse China Corp.* v. *Stanley Roberts* (Resp. Brief, p. 9), had, prior to his decision herein, held valid and infringed a copyright of a dish or plate with a copyright notice on the reverse side. The positioning of the name of the maker on the reverse side of a dish, as with a spoon, is in accord with universal custom and usage. Patently, the copyright considerations applicable to a kitchen utensil are far removed from a work of fine arts.

It would seem that the express designation in 17 U.S.C. §20 as to where the copyright notice should appear on books, printed publications, periodicals and musical works was a practical necessity to avoid mischief in the application of the statute with respect to such works.

And probably, because of the numerous kinds of works in the other categories of copyrightable subjects (17 U.S.C. §5), and the dimensional differences among them, the statute makes no express designation where the notice shall appear on them, to avoid similar mischief.

Petitioner's view of the statute is in accord with universal custom and usage.

(Answering Respondent's 4)

It is not difficult to understand how a person like petitioner's office manager, Sidney A. Harris, dealing daily in works of art of the type here involved, would concern himself with scrutiny of the face of such works only, the place where in the experience of such a person, the notice of copyright ought to be.

Obviously, to such a person, the label on the composition backing would appear to be only a trade emblem, particularly in view of the Old English style of print therein contained.

Moreover, it is not too difficult to perceive that an attorney, relying upon an interpretation of the statute as contended for by petitioner, in the conduct of an infringement case, might well stipulate to essential allegations of fact in a complaint, such as claimed originality of the work and presence of the notice of copyright on each copy thereof published or offered for sale; whereas, were there authority as to the interpretation of the statute contrariwise, he would strenuously contest such allegations.

Conclusion

For all of the reasons stated herein, and in the petition for writ of certiorari, a federal question which has not been settled by this court is presented, and the Writ should be granted.

Respectfully submitted,

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